

# **EXHIBIT A**



August 9, 2024

**SUBMITTED ELECTRONICALLY**

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, DC 20536-5009  
Email: [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)

**Re: FOIA Request for Records Related to ICE's Request for Information and Solicitation for New Immigration Detention Facilities (Fee Waiver & Expedited Proceeding Requested)**

Dear Freedom of Information Officer:

This letter is a request for records ("Request") made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation ("ACLU" or "Requestor").

Requestor seeks the disclosure of records submitted in response to a Request for Information ("RFI") titled "Multi-State Detention Facility Support - Request for Information," originally issued by U.S. Immigration and Customs Enforcement ("ICE") on May 30, 2024, to "identify possible detention facilities" in areas covered by the Chicago, Harlingen, and Salt Lake City Enforcement and Removal Operations ("ERO") Field Offices. Requestor also seeks the disclosure of records submitted in response to ICE's "Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility," originally published on June 26, 2024.

Requester also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

**I. Background**

ICE detains over 37,000 people each day in a network of over 120 immigration detention facilities nationwide.<sup>1</sup> Although ICE owns five detention facilities, it relies on contracts, inter-

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<sup>1</sup> TRACImmigration, *Immigration Detention Quick Facts*, <https://trac.syr.edu/immigration/quickfacts/> [https://perma.cc/46QG-MXMF] (Jul. 14, 2024); ICE ERO, *Authorized Non-Dedicated Facility List*, *Authorized*



governmental service agreements, or inter-governmental agreements with private prison companies, and local and state jurisdictions, for the use of prisons, jails, and other detention facilities to hold the majority of people in its custody.<sup>2</sup>

On May 30, 2024, ICE issued a Request for Information (“RFI”) titled the “Multi-State Detention Facility Support-Request for Information,” with Notice ID number 2024ICEMULTISTATE on Sam.gov, the federal government’s official website for contract opportunities.<sup>3</sup> In the accompanying attachment, ICE provided further specifications for the RFI, noting that “ICE is seeking available detention facilities for single adult populations” in areas including the Chicago ERO Field Office (Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas); the Harlingen ERO Field Office (South Texas), and the Salt Lake City ERO Field Office (Utah, Idaho, Montana, and Nevada). The RFI noted that facilities “may be publicly or privately owned and publicly or privately operated.” Responses to the RFI were due on June 23, 2024, and were to be submitted by email to John L. Kurtz, Contracting Officer, and William Burger, Contracting Officer Representative.<sup>4</sup>

On June 26, 2024, ICE also issued a solicitation on Sam.gov, seeking “contract detention facility support” for the ICE ERO office in Newark, New Jersey. The solicitation, with the Notice ID FY24NJCDFSol, and related notice at FY24NJCDF, sought “comprehensive detention services for adult male and female noncitizens” to “provide for general population, intake, segregated housing, and medical beds at a contractor-owned/contractor operated detention facility or facilities.”<sup>5</sup> The opportunity was also updated to include the solicitation number 70CDCR24R00000012. The due date for offers was July 17, 2024, and the points of contact for the solicitation were also John L. Kurtz and William Burger.<sup>6</sup>

## II. Records Requested

This Request seeks, for the period from May 30, 2024 to the present, the following records:

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*Dedicated Facility List*, <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx> (Jul. 8, 2024).

<sup>2</sup> DHS Office of Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* 3 (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

<sup>3</sup> Sam.gov, *Multi-State Detention Facility Support - Request for Information*, <https://sam.gov/opp/ca0a3904f27d49039f75509932de0d3b/view> [https://perma.cc/2AXV-UV8Z].

<sup>4</sup> Exhibit A, *Multi-State Detention Facility Support - Request for Information*, available for download at <https://sam.gov/opp/ca0a3904f27d49039f75509932de0d3b/view> [https://perma.cc/2AXV-UV8Z].

<sup>5</sup> Sam.gov, Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility, <https://sam.gov/opp/5cf4af3e829a465b83efaa9942a765a3/view> [https://perma.cc/5VY5-QJCQ].

<sup>6</sup> *Id.*



- 1) All documents submitted in response to a Request for Information (“RFI”) titled “Multi-State Detention Facility Support - Request for Information,” with Notice ID “2024ICEMULTISTATE,” originally issued by U.S. Immigration and Customs Enforcement (“ICE”) on May 30, 2024, to “identify possible detention facilities” in areas covered by the Chicago, Harlingen, and Salt Lake City Enforcement and Removal Operations (“ERO”) Field Offices. *See* Exhibit A, Sam.gov, Multi-State Detention Facility Support-Request for Information.<sup>7</sup>
- 2) All documents submitted in response to a Contract Solicitation titled “Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility,” originally published on June 26, 2024, and updated on July 11, 2024. *See* Exhibit B, Sam.gov, Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility.<sup>8</sup>

For purposes of this Request, the terms listed below are defined as follows:

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“ICE-ERO” or “ERO” means Immigration and Customs Enforcement’s Enforcement and Removal Office, and any components, subcomponents, offices, or personnel therein.

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<sup>7</sup> Exhibit A, Sam.gov, Multi-State Detention Facility Support—Request for Information, <https://sam.gov/opp/ca0a3904f27d49039f75509932de0d3b/view> [https://perma.cc/P27U-Z3VE] (Jul. 8, 2024), and attachment, Multi-State Detention Facility Support-Request for Information.pdf.

<sup>8</sup> Exhibit B, Sam.gov, Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility, <https://sam.gov/opp/5cf4af3e829a465b83efaa9942a765a3/view> [https://perma.cc/7P3K-HTWB] (Aug. 2, 2024).



“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

### **III. Fee Waiver Request**

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

#### ***A. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.***

*First*, disclosure pursuant to this Request is in the public interest. ICE’s plans to expand and establish new immigration detention facilities have prompted attention and concern from Congress, the media, and advocates. In recent weeks, members of Congress have written multiple letters to the Department of Homeland Security raising concern about expansion of immigration detention, and urging DHS and ICE to reject contracts with for-profit prison corporations. For example, on June 6, 2024, Senator Cory Booker wrote to DHS and ICE urging the agency to reconsider plans to open a new, privately-operated immigration detention center in New Jersey.<sup>9</sup> The same day, eight Congressional representatives from New Jersey also wrote to the Department of Justice to refrain from supporting a plan to open a new immigration detention facility in the state.<sup>10</sup> Ten other senators wrote to DHS and ICE on May 14, 2024, urging the

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<sup>9</sup> Letter from Sen. Cory Booker to DHS Secretary Alejandro Mayorkas, Jun. 6, 2024, <https://www.booker.senate.gov/imo/media/doc/6624cblettericedetentionnewark1.pdf> [https://perma.cc/22AA-7V2R].

<sup>10</sup> Letter from Rep. Bonnie Watson Coleman et al., to Attorney General Merrick Garland, Jun. 6, 2024, [https://newjerseymonitor.com/wp-content/uploads/2024/06/doj\\_letter\\_to\\_ag\\_garland\\_6-6-24.pdf](https://newjerseymonitor.com/wp-content/uploads/2024/06/doj_letter_to_ag_garland_6-6-24.pdf) [https://perma.cc/2CSD-HCK7]; Sophie Nieto-Munoz, *New Jersey’s D.C. Democrats Say Biden Administration Should Not Support Immigrant Jail*, New Jersey Monitor, Jun. 10, 2024, <https://newjerseymonitor.com/2024/06/10/new-jerseys-d-c-democrats-say-biden-administration-should-not-support-new-immigrant-jail/>.



agency to recommit to phasing out ICE's use of private, for-profit immigration detention facilities.<sup>11</sup>

Multiple national news outlets have covered ICE's recent plans "for an expansion of ICE's . . . detention capabilities,"<sup>12</sup> to "increase overall detention capacity," "expand detention bed space,"<sup>13</sup> and to "pay for more detention space following President Biden's executive action on the border."<sup>14</sup> Local media outlets have covered these potential plans to expand immigration detention in areas identified by the RFI and solicitation notices.<sup>15</sup> Advocates have likewise raised concern with ICE's efforts to expand detention: on July 11, 2024, over 200 immigrant rights organizations sent a letter to DHS urging the administration to halt ICE's detention expansion efforts.<sup>16</sup> Disclosure of the information sought in the Request will contribute significantly to the public's understanding of ICE's plans to expand immigration detention in new facilities nationwide.

***B. Disclosure is not primarily in the commercial interest of the Requestor.***

*Second*, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.<sup>17</sup> Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-

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<sup>11</sup> Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, <https://www.warren.senate.gov/imo/media/doc/final-letter-to-dhs-and-ice-on-private-detention-center-use-05142024.pdf> [https://perma.cc/EJ5T-HC4L].

<sup>12</sup> Rafael Bernal, *Biden Administration's Immigrant Detention Moves Highlight Strained System*, The Hill, Jun. 15, 2024, <https://thehill.com/homenews/administration/4723342-biden-administration-immigrant-detention-moves-highlight-strained-system/>.

<sup>13</sup> Ted Hesson, *U.S. To Close Costly Texas Immigration Detention Center and Reroute Funds*, Reuters, Jun. 10, 2024, <https://www.reuters.com/world/us/us-close-costly-texas-immigration-detention-center-reroute-funds-2024-06-10/>.

<sup>14</sup> Michelle Hackman, *Biden to Close 'Dilley' Detention Center, Shift Resources Amid Border Crackdown*, Wall St. Journal, Jun. 10, 2024, <https://www.wsj.com/politics/policy/biden-to-close-dilley-detention-center-shift-resources-amid-border-crack-down-2b2cfcb5>.

<sup>15</sup> See, e.g. Tim Vandernack, *U.S. immigration Officials Seek Info on Possible Detention Center for Utah; Ogden Site Proposed*, KSL.com, Jul. 10, 2024, <https://www.ksl.com/article/51064305/us-immigration-officials-seek-info-on-possible-detention-center-for-utah-ogden-site-proposed>; Sophie Nieto-Munoz, *Immigrant Advocates Alarmed by Prospect of New Immigrant Jail in Newark*, New Jersey Monitor, Jun. 17, 2024, <https://newjerseymonitor.com/2024/06/17/immigrant-advocates-alarmed-by-prospect-of-new-immigrant-jail-in-newark/>.

<sup>16</sup> Letter from 211 Immigrant Rights Organizations to DHS Sec. Mayorkas, *Pattern of Deteriorating Immigration Detention Conditions Amid Expansion Efforts*, Jul. 11, 2024, <https://www.detentionwatchnetwork.org/sites/default/files/NGO%20Letter%20regarding%20ICE%20Detention%20-%20July%202024.pdf> [https://perma.cc/MM6M-VPW3].

<sup>17</sup> See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).



exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor's website also includes many features on information obtained through FOIA requests. For example, the ACLU published a report, *Behind Closed Doors: Abuse & Retaliation Against Hunger Strikers in U.S. Immigration Detention*, based on its FOIA request and analyses of FOIA documents related to the treatment of immigrants in detention.<sup>18</sup> Similarly, the ACLU co-authored a report, *Deadly Failures: Preventable Deaths in U.S. Immigration Detention*,<sup>19</sup> based on analyses of FOIA documents related to deaths of immigrants in custody. ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.<sup>20</sup> Requestor has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. Based on information obtained from a February 2018 FOIA for records about ICE's practice of misrepresenting or concealing their identity when conducting enforcement actions, the ACLU has both sued to stop these practices and provided community resources on the practice.<sup>21</sup> Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

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<sup>18</sup> ACLU, *Behind Closed Doors: Abuse and Retaliation Against Hunger Strikers in U.S. Immigration Detention* (2021), <https://www.aclu.org/publications/report-behind-closed-doors-abuse-retaliation-against-hunger-strikers-us-immigration-detention>.

<sup>19</sup> ACLU, American Oversight, Physicians for Human Rights, *Deadly Failures: Preventable Deaths in U.S. Immigration Detention* (2024), <https://www.aclu.org/publications/deadly-failures-preventable-deaths-in-us-immigrant-detention>.

<sup>20</sup> See also *FOIA Database Regarding the U.S. Government's Violent Extremism Initiatives*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>21</sup> See ACLU of S. Cal., *Kidd v. Mayorkas*, available at <https://www.aclusocal.org/en/cases/kidd-v-mayorkas> (describing lawsuit and case developments); ACLU of S. Cal., *ICE Not Welcome: Verify, Document, and Report*, available at <https://www.aclusocal.org/icenotwelcome> (community resources).





***C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.***

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>22</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>23</sup> Similarly,

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<sup>22</sup> *See, e.g.*, Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

<sup>23</sup> *See, e.g.*, Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavior Screening Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian (Mar. 17, 2016),





Requestor regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.<sup>24</sup> This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Requestor also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. *See, e.g., Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).<sup>25</sup>

As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests

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<https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

<sup>24</sup> *See, e.g.,* Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

<sup>25</sup> Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.



are regularly waived for the ACLU as a “representative of the news media.”<sup>26</sup> A fee waiver would fulfill Congress’s legislative intent in amending FOIA.<sup>27</sup> Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.<sup>28</sup>

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

#### **IV. Expedited Processing Request**

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

##### ***A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.***

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<sup>26</sup> For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

<sup>27</sup> *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

<sup>28</sup> For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.



Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>29</sup> Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

**B. *The records sought are urgently needed to inform the public about actual or alleged government activity.***

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE’s active plans to expand immigration detention facilities in ICE’s Chicago, Salt Lake City, Harlingen, and Newark areas of responsibility. As described *supra*, this is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity by ICE. 5 U.S.C. § 552(a)(6)(E)(i)(I). Detention of noncitizens, and ICE’s decision to expand or end detention contracts, is a matter of significant government activity and public interest.<sup>30</sup> This Request will shed critical light on ICE’s detention.

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<sup>29</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.

<sup>30</sup> *See, e.g.* Ted Hesson, Mica Rosenberg, and Kristina Cooke, *Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited*, Reuters, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07/>; Jose Olivares, *Investigators Wanted to Close an Abusive ICE Facility. Biden’s Administration Extended Its Contract*, *The Appeal*, Jul. 25, 2024, <https://theappeal.org/biden-admin-extended-contract-abusive-ice-detention-center/>; Austin Fisher, *Torrance County Commission Votes to Extend ICE Contract*, *Source New Mexico*, Apr. 25, 2024, <https://sourcenm.com/2024/04/25/torrance-county-commission-votes-to-extend-ice-contract/>; Allison Kite, *Shuttered Private Jail in Leavenworth Could Become ICE Detention Center*, *Kansas Reflector*, Sept. 6, 2023, <https://kansasreflector.com/2023/09/06/shuttered-private-jail-in-leavenworth-could-become-ice-detention-center/>; Jose Abonce, *ICE Detains Illinois Immigrants in Out-of-State Jails*, *South Side Weekly*, Dec. 6, 2023, <https://southsideweekly.com/ice-detains-chicago-immigrants-in-wisconsin-despite-illinois-way-forward-act/>.



I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(e)(3).

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at 646-905-8907 or email me at [dgalindo@aclu.org](mailto:dgalindo@aclu.org) if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish all responsive records via email ([dgalindo@aclu.org](mailto:dgalindo@aclu.org)). If records must be sent via U.S. mail, please send to the following address:

Dan Galindo  
American Civil Liberties Union, Immigrants' Rights Project  
125 Broad St.  
New York, NY 10004

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Sincerely,

/s/ Dan Galindo

/s/ Eunice Cho

Dan Galindo  
Staff Attorney  
ACLU Immigrants' Rights Project

Eunice Cho  
Sr. Staff Attorney  
ACLU National Prison Project

# **EXHIBIT A**

**Important Reps and Certs Update** [Show Details](#)

Jul 18, 2024

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Jul 23, 2024

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# Multi-State Detention Facility Support - Request for Information

☐ **INACTIVE**

Contract Opportunity

**Notice ID**

2024ICEMULTISTATE

**Related Notice****Department/Ind. Agency**

HOMELAND SECURITY, DEPARTMENT OF

**Sub-tier**

US IMMIGRATION AND CUSTOMS ENFORCEMENT

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## General Information

**Contract Opportunity Type:** Sources Sought (Original)

**All Dates/Times are:** (UTC-04:00) EASTERN STANDARD TIME, NEW YORK, USA

**Original Published Date:** May 30, 2024 03:29 pm EDT

**Original Response Date:** Jun 23, 2024 05:00 pm EDT

**Inactive Policy:** 15 days after response date

**Original Inactive Date:** Jul 08, 2024

**Initiative:**

- None

## Classification

**Original Set Aside:**

**Product Service Code:** S206 - HOUSEKEEPING- GUARD

**NAICS Code:**

- 561612 - Security Guards and Patrol Services

**Place of Performance:**

Washington , DC 20536

USA



## Description

The United States Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is issuing this request for information (RFI) in accordance with Federal Acquisition Regulation (FAR) Part 10 to identify possible detention facilities to house noncitizens in support of its public safety mission under the authority of the Immigration and Nationality Act (INA), as amended. See attached RFI document for further informaiton.

## Attachments/Links

 [Download All Attachments/Links](#)

### Attachments

Document	File Size	Access	Updated Date
 <a href="#">Multi-State Detention Facility Support - Request for Information.pdf</a>	230 KB	 <b>Public</b>	May 30, 2024

## Contact Information

### Contracting Office Address

500 12TH ST SW  
WASHINGTON , DC 20024  
USA

### Primary Point of Contact

John L. Kurtz

✉ [john.kurtz@ice.dhs.gov](mailto:john.kurtz@ice.dhs.gov)

☎ 2029931101

## Secondary Point of Contact

---

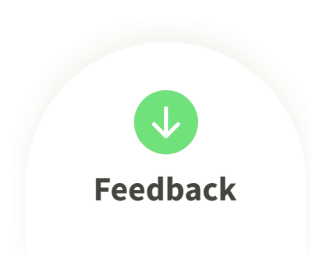
William Burger

✉ [william.burger@ice.dhs.gov](mailto:william.burger@ice.dhs.gov)

☎ 2028360532

## History

↻ Jul 08, 2024 11:55 pm EDT  
Sources Sought (Original)



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**Multi-State Detention Facility Support - Request for Information**  
**U.S. Immigration and Customs Enforcement**  
**Immigration Detention Services**

**A. Introduction**

The United States Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is issuing this request for information (RFI) in accordance with Federal Acquisition Regulation (FAR) Part 10 to identify possible detention facilities to house noncitizens and immigration violators in support of its public safety mission under the authority of the Immigration and Nationality Act (INA), as amended.

The intent of this RFI is to obtain market information for planning purposes and to determine appropriate strategies to meet the agency's requirements. This RFI is issued solely for informational and planning purposes and does not constitute an RFP or a commitment to an RFP in the future. Responses to this notice are not considered offers and cannot be accepted by the government to form a binding contract. Responders are advised that the government will not pay for any information or administrative costs incurred in response to this announcement and information submitted in response to this RFI will not be returned. ICE may use the information submitted to this RFI to determine any potential for future requirements and contingent on available funding.

**B. Facility Overview and ICE Preferences**

ICE is seeking available detention facilities for single adult populations (male and female) in the following areas:

- **Chicago ERO Field Office** includes Illinois, Indiana, Wisconsin, Missouri, Kentucky, Kansas

Point of Contact: [Chicago.Outreach@ice.dhs.gov](mailto:Chicago.Outreach@ice.dhs.gov)

- **Harlingen ERO Field Office** includes south Texas

Point of Contact: [Harlingen.Outreach@ice.dhs.gov](mailto:Harlingen.Outreach@ice.dhs.gov)

- **Salt Lake City ERO Field Office** includes Utah, Idaho, Montana, Nevada

Point of Contact: [SaltLakeCity.Outreach@ice.dhs.gov](mailto:SaltLakeCity.Outreach@ice.dhs.gov)

Facilities should be within a two-hour surface commute of an ICE field office or sub-office (see below for listing). Interested parties may propose one or more facilities in each AOR and may also support multiple AORs. Facilities may be publicly or privately owned and publicly or privately operated. Please submit the information below for each geographic area of interest. Submissions should be clearly labeled with the geographic area of interest and are limited to 15 pages including photographs.

Proposed solutions must be capable of providing all infrastructure, services, equipment, and personnel necessary to house ICE noncitizens in a safe and secure environment in accordance with [ICE national detention standards \(National Detention Standards 2019 and Performance Based National Detention Standards 2011\)](#). If your organization is unable to comply with these standards, please clearly describe what additional efforts are required, including renovations, staffing, etc.

Additionally, ICE is seeking the following:

- Approximately 850 to 950 detention beds (15%-20% for females) for low, medium-low, medium-high, and high-level security adult noncitizens, to include a dedicated dorm(s) or special housing unit(s) for ICE noncitizens with custody classifications of medium-high and high.
- Facilities with segregation unit(s), an infirmary, and local access to general acute hospital care to include an emergency room, surgical and mental health services, and access to public and commercial transportation routes and services.
- Dedicated facilities solely for ICE use are preferred. However, ICE will consider detention facilities housing other detained populations if separation from ICE detainees is maintained.
- For additional information regarding ICE's detention network please visit: <https://www.ice.gov/detain/detention-management>.

### C. RFI Responses:

- Interested parties should submit the following information:
  - Point of Contact information (name, title, phone number, address, email address).
  - Facility address(es).
  - Facility information: percentage of proposed facility for ICE use up to 100%. Less than 100% is acceptable; however, provide the composition of other populations and their percentage of the overall facility capacity.
  - Facility Ownership.
  - Proposed Facility Operator.
  - Date of last use, population, and operator.
  - Dedicated or Shared Facility.
  - Year built.
  - Capacity:
    - Number of housing units and beds (by gender and classification)
    - Beds available for ICE use
    - General population (GP) Beds
    - Intake Beds
    - Segregation Beds
    - Medical Beds



- Information on medical, dental, and mental health clinical space.
  - Capacity and information on visitation areas to include video teleconferencing space and capabilities.
  - Capacity and information on administrative space and parking availability for ICE and various stakeholders.
  - Size of, and information on, outdoor recreation area.
  - Photographs of the exterior and interior.
  - Timeframe for availability for ICE use.
  - Transportation distances and names of local hospitals, transportation hubs (airport, bus, train), fire stations, and immigration court.
  - Availability of, and access to, local consulates and pro-bono legal services
- Interested parties should also provide responses to the following:
    - Current detention or transportation services provided to ICE, Customs and Border Protection, U.S. Marshals Service, Federal Bureau of Prisons, or other federal agencies.
    - In the past, the government has priced detention contracts with an all-in bed day rate. Provide other pricing structures that you believe could be used to better distribute risk between the government and a contractor which might result in better operational and business outcomes for all parties.
    - Any recommended changes to ICE's requirements to better meet *best value*, i.e., by reducing cost substantially without sacrificing the effectiveness of core operations.
    - Identity potential hiring/staffing challenges.
    - List potential impediments to facility operation (pending or expected legal issues, state/county statutes, political concerns including opposition to ICE mission within local and state government/community, etc.).

#### **D. RFI Submission**

Responses must be submitted no later than **5 p.m. Eastern Time on 23 June 2024**. Responses cannot exceed **15 pages** in length. Responses shall be submitted to the following personnel via email:

John L. Kurtz, Contracting Officer, [John.Kurtz@ice.dhs.gov](mailto:John.Kurtz@ice.dhs.gov)  
William Burger, Contract Specialist, [William.Burger@ice.dhs.gov](mailto:William.Burger@ice.dhs.gov)

Contractors may provide additional feedback (i.e., questions, comments, etc.) to the government regarding this RFI. Government responses to industry feedback will not be provided or published. However, if formally solicited, industry feedback may be considered when finalizing the solicitation documentation including the requirements of the Statement of Work.

Please note that responses to this RFI may be subject to a Freedom of Information Act release. If any information in the response is proprietary, then it must be clearly identified and labeled as such.

AOR	Office Type	Address	City	Region	Zip
CHI	Sub-Field Office	1013 Morgan Town Road	Bowling Green	KY	42101
CHI	Sub-Field Office	4715 W. Junction Street	Springfield	MO	65802
CHI	Sub-Field Office	555 North Woodlawn Street	Wichita	KS	67208
CHI	Sub-Field Office	607 W Santa Fe Street	Garden City	KS	67846
CHI	Sub-Field Office	654 S. 7th St	Louisville	KY	40203
CHI	Field Office	101 Ida B. Wells Drive, Suite 4000	Chicago	IL	60605
CHI	Sub-Field Office	11125 N Ambassador Drive, Suite 100	Kansas City	MO	64153
CHI	Sub-Field Office	1222 Spruce Street	St. Louis	MO	63103
CHI	Sub-Field Office	7355 Woodland Drive	Indianapolis	IN	46278
CHI	Sub-Field Office	211 19th Street	Rock Island	IL	61201
CHI	Sub-Field Office	1300 Harrison Street, Room 0151	Fort Wayne	IN	46802
CHI	Sub-Field Office	1930 Beach Street	Broadview	IL	60155
CHI	Sub-Field Office	310 E. Knapp Street	Milwaukee	WI	53202
CHI	Sub-Field Office	222 W. Washington Ave., Suite 700	Madison	WI	53703
HLG	Field Office	1717 Zoy Street	Harlingen	TX	78552
HLG	Sub-Field Office	27991 Buena Vista Blvd	Los Fresnos	TX	78566
HLG	Sub-Field Office	2202 Cornerstone Blvd	Edinburg	TX	78539
HLG	Sub-Field Office	500 E. Mann Road, Suite A3	Laredo	TX	78041
HLG	Sub-Field Office	216 West Village Blvd, Suite 205	Laredo	TX	78041
HLG	Sub-Field Office	9149 TX-44	Corpus Christi	TX	78406
SLC	Field Office	2975 Decker Lake Dr, Suite 100	Salt Lake City	UT	84119
SLC	Sub-Field Office	1711 6th Avenue N, Suite 3	Billings	MT	59101
SLC	Sub-Field Office	1185 S. Vinnell Way	Boise	ID	83709
SLC	Sub-Field Office	2800 Skyway Drive	Helena	MT	59602
SLC	Sub-Field Office	501 S. Las Vegas Blvd., Suite 200	Las Vegas	NV	89101
SLC	Sub-Field Office	2487 S. 1620 W., Unit E	Ogden	UT	84401
SLC	Sub-Field Office	1793 W Business Park Dr.	Orem	UT	84058
SLC	Sub-Field Office	6999 Sierra Center Parkway	Reno	NV	89511
SLC	Sub-Field Office	2075 N. Blvd	Idaho Falls	ID	83404
SLC	Sub-Field Office	389 N. Industrial Road, Suite 4	St. George	UT	84770
SLC	Sub-Field Office	212 Deere Street	Twin Falls	ID	83301

# **EXHIBIT B**

**Important Reps and Certs Update** [Show Details](#)

Jul 18, 2024

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# Contract Detention Facility Solicitation No. 70CDCR24R00000012 – ERO Newark, New Jersey Area of Responsibility

☐ **INACTIVE**

Contract Opportunity

**Notice ID**  
FY24NJCDFSol**Related Notice**  
FY24NJCDF**Department/Ind. Agency**  
HOMELAND SECURITY, DEPARTMENT OF  
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## General Information

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**Contract Opportunity Type:** Solicitation (Updated)

**All Dates/Times are:** (UTC-04:00) EASTERN STANDARD TIME, NEW YORK, USA

■ **Updated Published Date:** Jul 11, 2024 05:35 pm EDT

**Original Published Date:** Jun 26, 2024 06:36 pm EDT

**Updated Date Offers Due:** Jul 17, 2024 05:00 pm EDT

**Original Date Offers Due:** Jul 17, 2024 05:00 pm EDT

**Inactive Policy:** 15 days after date offers due

**Updated Inactive Date:** Aug 01, 2024

**Original Inactive Date:** Aug 01, 2024

**Initiative:**

- None

## Classification

**Original Set Aside:**

**Product Service Code:** S206 - HOUSEKEEPING- GUARD

**NAICS Code:**

- 561612 - Security Guards and Patrol Services

**Place of Performance:**

Newark , NJ

USA

## Description

[View Changes](#)

This is a solicitation for contract detention facility support in accordance with the associated performance work statement. This effort will support the the United States Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Operations, Newark, New Jersey field office.

The Newark, New Jersey field office has a continued need for comprehensive detention services for adult male and female noncitizens and will provide for general population, intake, segregated housing, and medical beds at a contractor-owned/contractor-operated detention facility or facilities.

Detention services will be performed in accordance with the optimal level of the most current version of the Performance-Based National Detention Standards 2011 with 2016 revisions.

This opportunity is being updated to include the solicitation number (70CDCR24R00000012).

## Attachments/Links



## Contact Information

### Contracting Office Address

---

500 12TH ST SW

WASHINGTON , DC 20024

USA



## Primary Point of Contact

John L. Kurtz

✉ [john.kurtz@ice.dhs.gov](mailto:john.kurtz@ice.dhs.gov)

☎ (202) 993-1101

## Secondary Point of Contact

William Burger

✉ [william.burger@ice.dhs.gov](mailto:william.burger@ice.dhs.gov)

☎ 2028360532

## History

- ➔ Aug 02, 2024 12:00 am EDT  
Solicitation (Updated)
- Jun 26, 2024 06:36 pm EDT  
[Solicitation \(Original\)](#)
- Jun 11, 2024 11:55 pm EDT  
[Presolicitation \(Original\)](#)



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